In the Supreme Court of the United States.

OCTOBER TERM, 1904.

THE UNITED STATES
v.
JU TOY. } No. 535.

ON CERTIFICATE FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

BRIEF FOR THE UNITED STATES.

STATEMENT.

Ju Toy, a person of Chinese descent, came directly from China to San Francisco on the steamship *Doric*. In October, 1904, he made application to the officer charged with enforcing the Chinese-exclusion acts for admission into the United States, claiming citizenship because born therein. Opportunity was given him to make a voluntary statement, and all offered evidence in his behalf was received. After consideration of the facts, the officer decided Ju Toy was a Chinese alien not entitled under any law to enter or remain within the United States. He accordingly refused permission to land, and ordered the applicant returned to China

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by the steamship company which brought him therefrom. The Secretary of Commerce and Labor, upon appeal to him, approved the order. (R., 1.)

After such action by the Secretary Ju Toy presented a petition for a writ of *habeas corpus* to the United States District Court at San Francisco, wherein he alleged detention by the manager of the steamship company and

> That the imprisonment, detention, confinement, and constraint aforesaid are illegal, and the illegality thereof consists in this, to wit: That it is claimed by the said general manager of the above-mentioned steamship company that the said passenger is a subject of the Emperor of China, and must not and can not be allowed to land under the provisions of the act of Congress of May 6, 1882, entitled "An act to execute certain treaty stipulations relating to Chinese," and the acts amendatory thereof and supplemental thereto.
>
> That said passenger does not come within the restrictions of said act, but on the contrary your petitioner alleges that said passenger was a resident of the United States and departed therefrom temporarily; that said passenger is a native-born citizen of the United States, having been born in San Francisco, State of California, at —— Dupont street, on or about 1882.
>
> That he has applied to the collector of the port of San Francisco to be permitted to land, but said application was denied. (R., 2.)

Attached to the petition was a copy of the order of the Secretary dismissing the appeal.

The petition did not allege or show that petitioner was deprived of a fair hearing or that the immigration officer acted in an unwarranted way, or abused the discretion given him by law. It was based upon a mere allegation of citizenship by birth.

The writ was issued, and thereupon the district attorney, in behalf of the Unied States, interposed and answered, setting up all the facts relating to petitioner's arrival, the application for landing, the hearing thereon and denial thereof by the immigration officer, the appeal to the Secretary of Commerce and Labor and his action, and exhibited a copy of all evidence offered upon the hearing and the orders by the officer and the Secretary. No traverse of the answer and return was made and its statements were not questioned.

A motion was made to dismiss the writ because (R., 6)—

> 1. The petition fails to allege and show that upon the case presented for their determination the immigration officers abused the discretion vested in them by law, or that their action was unlawful, or that any error prejudicial to the detained Ju Toy was committed.
>
> 2. It does not appear from the return and answer made to the writ that the immigration officers, or the Secretary of Commerce and Labor, acted in violation of the authority conferred upon them by law, or that upon the case submitted to them abused their discretion, or acted unlawfully, or committed any error prejudicial to the detained Ju Toy.

3. The judgments and rulings of the immigration officers excluding the detained Ju Toy, affirmed on appeal to the Secretary of Commerce and Labor, should be treated by this court as final and conclusive of the questions involved, since it does not affirmatively appear from the whole record that those officers, in the case submitted to them, acted in an unwarranted way, abused their discretion, or committed any error prejudicial to the interest of the detained Ju Toy, and said Ju Toy is not therefore unlawfully deprived of his liberty.

4. The petition, return, and answer show that the detained Ju Toy has no legal right to enter or remain in the United States and is not unlawfully deprived of his liberty.

5. There is nothing in the record to show that the detained Ju Toy is unlawfully deprived of his liberty or that he has been unlawfully denied admission to the United States, or that he has a right to enter and remain therein.

The motion to dismiss was overruled and the cause referred to a special referee to take evidence upon the issues. The Government objected to the introduction of any testimony, claiming the questions of fact had been passed upon by officers authorized to determine them, and that in the absence of an allegation impeaching or in some way assigning error to their action no further proceedings should be allowed. No witness was offered in its behalf.

The referee reported the testimony and his finding therefrom that Ju Toy was born in the United States and a citizen thereof. Thereupon the court adjudged

the petitioner was illegally restrained and discharged him from custody.

An appeal was taken to the Circuit Court of Appeals and, to enable it to decide the cause and dispose of many similar ones now pending, it has certified the following questions of law concerning which instructions are desired (R., 10, 11):

> First. Should a district court of the United States grant a writ of *habeas corpus* in behalf of a person of Chinese descent being held for return to China by the steamship company which brought him therefrom, who having recently arrived at a port of the United States made application to land as a native-born citizen thereof, and who, after examination by the duly authorized immigration officers, was found by them not to have been born in the United States, was denied admission and ordered deported, which finding and action upon appeal was affirmed by the Secretary of Commerce and Labor, when the foregoing facts appear to the court, and the petition for the writ alleges unlawful detention on the sole ground that petitioner does not come within the restrictions of the Chinese exclusion acts, because born in and a citizen of the United States and does not allege or show in any other way unlawful action or abuse of their discretion or powers by the immigration officers who excluded him?
>
> Second. In a *habeas corpus* proceeding should a district court of the United States dismiss the writ or should it direct a new or further hearing upon evidence to be presented where the

writ had been granted in behalf of a person of Chinese descent being held by the steamship company for return to China from whence it brought him, who recently arrived from that country and asked permission to land upon the ground that he was born in and was a citizen of the United States, when the uncontradicted return and answer show that such person was granted a hearing by the proper immigration officers who found he was not born in the United States, that his application for admission was considered and denied by such officers, and that the denial was affirmed upon appeal to the Secretary of Commerce and Labor, and where nothing more appears to show that such executive officers failed to grant a proper hearing, abused their discretion, or acted in any unlawful or improper way upon the case presented to them for determination?

Third. In a *habeas corpus* proceeding in a district court of the United States instituted in behalf of a person of Chinese descent being held for return to China by the steamship company which recently brought him therefrom to a port of the United States and who applied for admission therein upon the ground that he was a native-born citizen thereof but who, after a hearing, the lawfully designated immigration officers found was not born therein and to whom they denied admission, which finding and denial, upon appeal to the Secretary of Commerce and Labor, was affirmed—should the court treat the finding and action of such executive officers upon the question of citizenship and other questions of fact

> as having been made by a tribunal authorized to decide the same and as final and conclusive unless it be made affirmatively to appear that such officers, in the case submitted to them, abused the discretion vested in them, or in some other way in hearing and determining the same committed prejudicial error?

The act of Congress, February 14, 1903 (32 Stat., 825), created the Department of Commerce and Labor, intrusted to it (section 4) enforcement of the Chinese exclusion acts, and (section 7) imposed upon the Secretary the duties and powers relating thereto formerly exercised by the Secretary of the Treasury. It further provided (section 7):

> That * * * the authority, power, and jurisdiction in relation thereto [the Chinese exclusion acts] now vested by law or treaty in the collectors of customs and the collectors of internal revenue are hereby conferred upon and vested in such officers under the control of the Commissioner-General of Immigration as the Secretary of Commerce and Labor may designate therefor.

The following from the sundry civil appropriation act of August 18, 1894 (28 Stat., 390), is in effect:

> In every case where an alien is excluded from admission into the United States under any law or treaty now existing or hereafter made, the decision of the appropriate immigration or customs officers, if adverse to the admission of such alien, shall be final, unless reversed on appeal to the Secretary of the Treasury.

The fundamental question involved is what effect the courts should give in *habeas corpus* proceedings to the action of executive officers where a Chinese person has asked admission alleging citizenship and has been excluded because they held the claim not well founded, when there is no allegation or proof of erroneous or wrongful action by such officers.

The Government maintains that Congress has imposed upon executive officers, as a special tribunal, the duty to pass upon the admission into the United States of Chinese persons applying therefor upon any ground, and that their findings on questions of fact are conclusive unless properly impeached for fraud, misconduct, or some unwarranted action upon their part in the proceeding before them.

It is maintained in behalf of the Chinese—and this seems to have been sustained by the district court—that when entry into the United States sought upon a claim of citizenship by birth has been finally denied on appeal to the Secretary of Commerce and Labor the applicant is entitled of right, upon a petition merely alleging unlawful imprisonment and such citizenship, to a writ of *habeas corpus* and an entirely new trial of the issues before the court, without reference to proceedings before executive officers.

The Government seeks to give some effect to the action of immigration officers taken in pursuance of law.

The proposition advanced in behalf of the Chinese amounts to this: Where proceedings before executive

officers result in excluding the applicant, upon *habeas corpus* they should be disregarded and an entirely new trial awarded whenever citizenship is alleged.

ARGUMENT.

I.

Congress by constitutional enactments has entrusted to executive officers as a special tribunal determination of all questions of fact—including a claim of citizenship—relating to the right of entry into the United States of Chinese applying therefor; and a bare allegation of citizenship is not enough to support a petition for habeas corpus by one denied admission.

In *United States* v. *Sing Tuck* (194 U. S., 161, 168, 170), certain Chinese just arrived from China claimed the right to enter because of birth and citizenship. They refused to produce evidence in support of their contentions when brought before the immigration officer, and denied his jurisdiction to pass upon the questions in issue because of their claim. Admission having been denied, writs of *habeas corpus* were sued out and trials of all questions by the court demanded as of right. The writs were dismissed.

Mr. Justice Holmes, in behalf of the court, said:

> (168) Whatever may be the ultimate rights of a person seeking to enter the country and alleging that he is a citizen, it is within the power of Congress to provide at least for a preliminary investigation by an inspector, and for a detention of the person until he has established his citizenship in some reasonable way.
>
> (170) We are of opinion that the attempt to disregard and override the provisions of

> the statutes and the rules of the Department and to swamp the courts by a resort to them in the first instance must fail. We may add that, even if it is beyond the power of Congress to make the decision of the Department final upon the question of citizenship, we agree with the Circuit Court of Appeals that a petition for *habeas corpus* ought not to be entertained, unless the court is satisfied that the petitioner can make out at least a *prima facie* case. A mere allegagation of citizenship is not enough. But before the courts can be called upon, the preliminary sifting process provided by the statutes must be gone through with. Whether after that a further trial may be had we do not decide.

The opinion and judgment in *United States* v. *Sing Tuck* settled the following propositions:

A Chinaman seeking admission into the United States because of alleged birth therein must in the first instance submit his claim to the determination of immigration officers. Such officers have a right to decide upon all questions of fact, including that of citizenship. The applicant may not ignore them and appeal directly to the courts for determination of his rights. A writ of *habeas corpus* should not be granted until he has prosecuted an appeal to the Secretary of Commerce and Labor as provided by the statute. After the Secretary has, upon appeal, affirmed the action of immigration officers excluding a Chinaman a petition for *habeas corpus* should not be entertained unless the court is satisfied petitioner can make out a

prima facie case; a mere allegation of citizenship is not enough.

Referring to the situation which would arise after final rejection by the Secretary, the court declined to say "whether upon a petition showing reasonable cause there ought to be a further trial upon *habeas corpus*."

In behalf of Sing Tuck it was earnestly insisted that a claim of citizenship is a judicial question, determination of which is granted exclusively to the courts by article 3, section 2, of the Constitution, and Congress has no power to entrust it to executive officers; and, moreover, to require an applicant for admission to submit such a claim to an immigration officer would violate the prohibition of the Fifth Amendment that no person shall be deprived of his liberty without due process of law.

In *Lem Moon Sing* v. *United States* (158 U. S., 538, 546), it was alleged the petitioner had acquired a domicile in the United States, and counsel maintained that to permit executive officers to pass on his right to return thereto would deprive him of his liberty without due process of law. Mr. Justice Harlan, in behalf of the court, said:

> The contention is that while, generally speaking, immigration officers have jurisdiction under the statute to exclude an alien who is not entitled under some statute or treaty to come into the United States; yet if the alien is entitled of right, by some law or treaty, to enter this coun-

try, but is nevertheless excluded by such officers, the latter exceed their jurisdiction; and their illegal action, if it results in restraining the alien of his liberty, presents a judicial question for the decision of which the courts may intervene upon a writ of *habeas corpus*.

That view, if sustained, would bring into the courts every case of an alien who claimed the right to come into the United States under some law or treaty, but was prevented from doing so by the executive branch of the Government. This would defeat the manifest purpose of Congress in committing to subordinate immigration officers and to the Secretary of the Treasury exclusive authority to determine whether a particular alien seeking admission into this country belongs to the *class* entitled by some law or treaty to come into the country, or to a *class* forbidden to enter the United States. Under that interpretation of the act of 1894 the provision that the decision of the appropriate immigration or customs officers should be *final*, unless reversed on appeal to the Secretary of the Treasury, would be of no practical value.

Chin Bak Kan v. *United States* (186 U. S., 193, 200) was a proceeding before a commissioner to deport a Chinaman within the United States. Counsel strongly insisted that the commissioner had no jurisdiction, because of the claim of citizenship. They said (brief, p. 25):

We accordingly submit that the question of American citizenship can not be lawfully left for determination in this class of cases to an

inferior magistrate like a United States commissioner not holding a court of record, not exercising any part of the "judicial power of the United States" (Const., art. 3, sec. 1; *Robertson* v. *Baldwin*, 165 U. S., 275) in proceedings in which there is no authority to secure the appearance of witnesses or otherwise secure due process of law.

The court, by Mr. Chief Justice Fuller, replying to contention of counsel, said:

> But it is argued that the commissioner had no jurisdiction to act because the claim of citizenship was made. The ruling in *United States* v. *Wong Kim Ark* (169 U. S., 649) was to this effect: "A child born in the United States, of parents of Chinese descent, who, at the time of his birth, are subjects of the Emperor of China, but have a permanent domicile and residence in the United States, and are there carrying on business, and are not employed in any diplomatic or official capacity under the Emperor of China, becomes at the time of his birth a citizen of the United States." It is impossible for us to hold that it is not competent for Congress to empower a United States commissioner to determine the various facts on which citizenship depends under that decision.
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> By the law the Chinese person must be adjudged unlawfully within the United States unless he "shall establish by affirmative proof, to the satisfaction of such justice, judge, or commissioner, his lawful right to remain in the United States." As applied to aliens there is no question of the validity of that provision, and

the treaty, the legislation, and the circumstances considered, compliance with its requirements can not be avoided by the mere assertion of citizenship. The facts on which such a claim is rested must be made to appear. And the inestimable heritage of citizenship is not to be conceded to those who seek to avail themselves of it under pressure of a particular exigency, without being able to show that it was ever possessed.

In *The Japanese Immigrant Case* (189 U. S., 86, 97, 100), Mr. Justice Harlan, for the court, said:

(97) That Congress may exclude aliens of a particular race from the United States; prescribe the terms and conditions upon which certain classes of aliens may come to this country; establish regulations for sending out of the country such aliens as come here in violation of law; and commit the enforcement of such provisions, conditions, and regulations exclusively to executive officers, without judicial intervention, are principles firmly established by the decisions of this court.

(100) It has been settled that the power to exclude or expel aliens belonged to the political department of the Government, and that the order of an executive officer, invested with the power to determine finally the facts upon which an alien's right to enter this country or remain in it depended, was "due process of law, and no other tribunal, unless expressly authorized by law to do so, was at liberty to re-examine the evidence on which he acted, or to

controvert its sufficiency." * * * But this court has never held, nor must we now be understood as holding, that administrative officers, when executing the provisions of a statute involving the liberty of persons, may disregard the fundamental principles that inhere in "due process of law" as understood at the time of the adoption of the Constitution. One of these principles is that no person shall be deprived of his liberty without opportunity, at some time, to be heard, before such officers, in respect of the matters upon which that liberty depends—not necessarily an opportunity upon a regular set occasion, and according to the forms of judicial procedure, but one that will secure the prompt, vigorous action contemplated by Congress, and at the same time be appropriate to the nature of the case upon which such officers are required to act.

Murray's Lessee et al. v. *Hoboken Land and Improvement Company* (18 How., 272, 280, 282). Opinion by Mr. Justice Curtis.

(280) For, though "due process of law" generally implies and includes *actor*, *reus*, *judex*, regular allegations, opportunity to answer, and a trial according to some settled course of judicial proceedings, * * * yet this is not universally true. There may be, and we have seen that there are cases, under the law of England after *Magna Charta*, and as it was brought to this country and acted on here, in which process, in its nature final, issues against the body, lands, and goods of certain public debtors without any such trial; and this brings

us to the question whether those provisions of the Constitution which relate to the judicial power are incompatible with these proceedings?

That the auditing of the accounts of a receiver of public moneys may be, in an enlarged sense, a judicial act, must be admitted. So are all those administrative duties the performance of which involves an inquiry into the existence of facts and the application to them of rules of law. In this sense the act of the President in calling out the militia under the act of 1795 (12 Wheat., 19), or of a commissioner who makes a certificate for the extradition of a criminal, under a treaty, is judicial. But it is not sufficient to bring such matters under the judicial power, that they involve the exercise of judgment upon law and fact. (*United States* v. *Ferreira*, 13 How., 40.) It is necessary to go further, and show not only that the adjustment of the balances due from accounting officers may be, but from their nature must be, controversies to which the United States is a party, within the meaning of the second section of the third article of the Constitution. We do not doubt the power of Congress to provide by law that such a question shall form the subject-matter of a suit in which the judicial power can be exerted. The act of 1820 makes such a provision for reviewing the decision of the accounting officers of the Treasury. But, until reviewed, it is final and binding; and the question is, Whether its subject-matter is necessarily, and without regard to the consent of Congress, a judicial controversy? And we are of opinion it is not. * * *

> (282.) It may be added that probably there are few governments which do or can permit their claims for public taxes, either on the citizen or the officer employed for their collection or disbursement, to become subjects of judicial controversy, according to the course of the law of the land. Imperative necessity has forced a distinction between such claims and all others, which has sometimes been carried out by summary methods of proceeding and sometimes by systems of fines and penalties, but always in some way observed and yielded to.

In *Springer* v. *United States* (102 U. S., 586, 594), the collector of internal revenue issued a warrant for assessed tax and penalty, which was levied on certain real estate and the same sold without judicial action. The owner claimed the proceedings deprived him of property without due process of law. The court held the contention not well founded and, by Mr. Justice Swayne, said:

> The prompt payment of taxes is always important to the public welfare. It may be vital to the existence of a government. The idea that every taxpayer is entitled to the delays of litigation is unreason. If the laws here in question involved any wrong or unnecessary harshness, it was for Congress, or the people who make Congresses, to see that the evil was corrected. The remedy does not lie with the judicial branch of the Government.

Hilton & Another v. *Merritt, Collector* (110 U. S., 97, 107).

Robertson v. *Baldwin* (165 U. S., 275, 279).

In *Fong Yue Ting* v. *United States* (149 U. S., 698, 713, 714), Mr. Justice Gray, in behalf of the court, said:

> The power of Congress, therefore, to expel, like the power to exclude aliens, or any specified class of aliens, from the country, may be exercised entirely through executive officers; or Congress may call in the aid of the judiciary to ascertain any contested facts on which an alien's right to be in the country has been made by Congress to depend. * * *
>
> It is no new thing for the law-making power, acting either through treaties made by the President and Senate, or by the more common method of acts of Congress, to submit the decision of questions, not necessarily of judicial cognizance, either to the final determination of executive officers or to the decision of such officers in the first instance, with such opportunity for judicial review of their action as Congress may see fit to authorize or permit.
>
> For instance, the surrender, pursuant to treaty stipulations, of persons residing or found in this country and charged with crime in another may be made by the executive authority of the President alone when no provision has been made by treaty or by statute for an examination of the case by a judge or magistrate. * * *
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> So claims to recover back duties illegally exacted on imports may, if Congress so provides, be finally determined by the Secretary of the Treasury.

Public Clearing House v. *Coyne* (194 U. S., 497, 508).

> It is too late to argue that due process of law is denied whenever the disposition of property is affected by the order of an executive department. * * * That due process of law does not necessarily require the interference of the judicial power is laid down in many cases and by many eminent writers upon the subject of constitutional limitations.

Bushnell v. *Leland*, 164 U. S., 684, 685.

The direct course of all the later decisions, both English and American, is to establish the rule that probable cause must first be shown to obtain the writ of *habeas corpus*, whether it be granted at common law or under the statute.

> Church on Habeas Corpus, sec. 92.
> *Ex parte Watkins*, 3 Peters, 193.
> *Ex parte Milligan*, 4 Wall., 2, 110.
> *Ex parte Royall*, 117 U. S., 250.
> *Ex parte Terry*, 128 U. S., 301.

II.

Where the law has confided to a special tribunal authority to hear and determine matters arising in the course of its duties, a decision by it within the scope of its authority as to questions of fact is conclusive against collateral attack.

And where the jurisdiction depends upon a question of fact which is the very gist of the controversy, the determination of that is generally final.

Since the *Sing Tuck* case it is plain that a Chinaman seeking admission upon the ground of citizenship must submit his claim with evidence to sustain it to execu-

tive officers and that they have jurisdiction to pass primarily upon all matters. The point now presented is whether all the proof must be first offered before those officers and what effect the courts shall give to judgments by them. Must the applicant lay before them the real case upon which he relies? And is their finding entitled to the weight and respect usually accorded the determination of a special tribunal, or is it only an idle ceremony made necessary by solemn adjudication, but without consequence when completed?

In *Gonzales* v. *Williams* (192 U. S., 1) the executive officers wrongfully decided a point of law upon conceded facts, and this was alleged upon application for the writ. The return supported the petition and the court held the petitioner was entitled to immediate relief upon *habeas corpus*—matters of law being for its determination. There, from the record, the detention was manifestly illegal—the law having been wrongfully construed by the special tribunal. Here the certified questions relate to decisions upon questions of fact.

The Government does not maintain that the courts have no power to supervise, by writs of *habeas corpus*, proceedings before immigration officers and, in proper cases, to afford relief. But it submits with confidence that when one seeks admission he must present the real case upon which he relies to those officers and that findings of fact by them in matters which the statutes require them to pass on should be accepted as conclusive until and unless properly impeached by

allegations and evidence, e. g., of mistake, fraud, injustice, or manifest wrong.

It would appear little short of farcical to require officers day by day to hear and decide claims of citizenship and after their judgment is pronounced to permit the applicant to go at once before the court upon a bare allegation of the same claim and secure there an entirely new trial on a different record as to all points in issue, wholly without regard to former proceedings.

This court in many opinions has passed upon the proposition here advanced as to matters before the Land Department and various officers of the Government, some of which are hereinafter cited.

In *United States* v. *Arredondo* (6 Pet., 691, 729) Mr. Justice Baldwin, for the court, said:

> It is a universal principle that, where power or jurisdiction is delegated to any public officer or tribunal over a subject-matter, and its exercise is confided to his or their discretion, the acts so done are binding and valid as to the subject-matter; and individual rights will not be disturbed collaterally, for anything done in the exercise of that discretion, within the authority and power conferred. The only questions which can arise between an individual claiming a right under the acts done and the public, or any person denying its validity, are, power in the officer and fraud in the party. All other questions are settled by the decision made or the act done by the tribunal or officer, whether executive, legislative, judicial, or

special, unless an appeal is provided for, or other revision, by some appellate or supervisory tribunal, is prescribed by law.

Quinby v. *Conlan* (104 U. S., 420, 425, 426). Opinion by Mr. Justice Field.

The laws of the United States prescribe with particularity the manner in which portions of the public domain may be acquired by settlers. * * * By them a land department has been created to supervise all the various steps required for the acquisition of the title of the Government. Its officers are required to receive, consider, and pass upon the proofs furnished as to the alleged settlements upon the lands, and their improvement, when preemption rights are claimed, and, in case of conflicting claims to the same tract, to hear the contesting parties. * * * For mere errors of judgment as to the weight of evidence on these subjects, by any of the subordinate officers, the only remedy is by an appeal to his superior of the department. The courts can not exercise any direct appellate jurisdiction over the rulings of those officers or of their superior in the department in such matters, nor can they reverse or correct them in a collateral proceeding between private parties.

It would lead to endless litigation, and be fruitful of evil, if a supervisory power were vested in the courts over the action of the numerous officers of the Land Department on mere questions of fact presented for their determination. It is only when those officers have miscontrued the law applicable to

the case, as established before the Department, and thus have denied to parties rights which, upon a correct construction, would have been conceded to them, or where misrepresentations and fraud have been practiced, necessarily affecting their judgment, that the courts can, in a proper proceeding, interfere and refuse to give effect to their action.

United States v. *California, &c., Land Company* (148 U. S., 31, 43).

It is familiar law that when jurisdiction is delegated to any officer or tribunal, his or its determination is conclusive.

The Japanese Immigrant Case (189 U. S., 86, 100).

It has been settled that the power to exclude or expel aliens belonged to the political department of the Government, and that the order of an executive officer, invested with the power to determine finally the facts upon which an alien's right to enter this country, or remain in it, depended, was "due process of law, and no other tribunal, unless expressly authorized by law to do so, was at liberty to reexamine the evidence on which he acted, or to controvert its sufficiency."

Bates & Guild Company v. *Payne* (194 U. S., 106, 109). Opinion by Mr. Justice Brown.

The rule upon this subject may be summarized as follows: That where the decision of questions of fact is committed by Congress to the judgment and discretion of the head of a

> Department, his decision thereon is conclusive; and that even upon mixed questions of law and fact, or of law alone, his action will carry with it a strong presumption of its correctness and the courts will not ordinarily review it, although they may have the power, and will occasionally exercise the right of so doing.

Foley v. *Harrison et al.*, 15 How., 447.

Murray's Lessee et al. v. *Hoboken Land and Improvement Co.*, 18 How., 272.

Rubber Co. v. *Goodyear*, 9 Wall., 798.

Shepley et al. v. *Cowan et al.*, 91 U. S., 340.

Moore v. *Robbins*, 96 U. S., 535.

Springer v. *United States*, 102 U. S., 586.

Steel v. *Smelting Co.*, 106 U. S., 450.

Hilton and another v. *Merritt, Collector*, 110 U. S., 97, 106.

Hadden v. *Merritt*, 115 U. S., 25, 27.

Lee v. *Johnson*, 116 U. S., 51.

Heath v. *Wallace*, 138 U. S., 585.

Burfenning v. *Chicago, St. Paul, etc., Railway*, 163 U. S., 323.

Bushnell v. *Leland*, 164 U. S., 684, 685.

Gardner v. *Bonestell*, 180 U. S., 369.

Bates & Guild Co. v. *Payne*, 194 U. S., 106.

Where the jurisdiction of a tribunal of special or limited authority may be said to depend upon the existence of a certain state of facts which it must pass upon, its decision thereon, if there was any evidence on

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Freeman on Judgments, 4th ed., sec. 523:

> Whenever the jurisdiction of a court not of record depends on a fact which the court is required to ascertain and settle by its decision, such decision, if the court has jurisdiction of the parties, is conclusive and not subject to any collateral attack. (See authorities cited.)

Cooley's Const. Lim., 7th ed., p. 586 and authorities.

Brittain v. *Kinnaird*, 1 Broderick & Bingham, 432.

Wanzer et al. v. *Howland et al.*, 10 Wis., 8, 16:

> If a tribunal is authorized to act upon a certain state of facts, and also to try whether the facts exist, then, if they are properly alleged before it, and the parties are legally notified and have opportunity to contest them, the finding of such a tribunal upon those facts would be the finding of a competent tribunal, and ought to be conclusive until reversed in a direct proceeding.

Comstock v. *Crawford*, 3 Wall., 402.

Thompson v. *Whitman*, 18 Wall., 457, 468.

Van Fleet on Coll. Attack, sec. 63.

which to base it, must be held final and conclusive in all collateral inquiries.

Cooley's Const. Limitations, 6th ed., p. 501 and authorities there cited.

Am. & Eng. Enc. of Law, 2d ed. (title, Jurisdiction), vol. 17, p. 1085, and authorities there cited.

Church on Habeas Corpus, 2d ed., pp. 381, 517.

The People ex rel. Tweed v. *Liscomb* (60 N. Y., 559, 568).

The distinction between courts of limited and of general jurisdiction is this, that when their acts and judgments are relied upon, either as giving a right or furnishing a defense, jurisdiction of the latter is presumed, while that of the former must be proved; but the presumption in favor of the jurisdiction of the court of general jurisdiction is one of fact, and not conclusive. It may be rebutted. If it depends upon the existence of certain facts, and the court has passed upon those facts, the determination is conclusive until its judgment has been reversed or set aside, and this rule is as applicable to the judgments of inferior as of superior courts.

People's Savings Bank v. *Wilcox*, 15 R. I., 258, 260.
Evansville, &c., R. R. Co. v. *Evansville*, 15 Ind., 395.
Brittain v. *Kinnaird*, 1 B. & B., 432.
Simmons v. *Saul*, 138 U. S., 439, 452.
New Orleans v. *Fisher*, 180 U. S., 185.

A *habeas corpus* proceeding is collateral to one the validity of which is attacked thereby.

In re Lennon, 166 U. S., 548, 553.
Ex parte Watkins, 3 Peters, 193.

III.

The function of habeas corpus is to test the legality of confinement, and unless that appears contrary to law the writ should not be granted. Immigration officers are required to exclude every Chinaman who fails to show before them a right of entry. The detention necessary to secure return of an excluded one can not be illegal unless the exclusion resulted from fraud or mistake or from some illegal or unwarranted action by the officers in the proceedings before them.

The purpose of the Chinese exclusion acts is to *prevent* landing of Chinese persons unless it affirmatively appears they are exempt from the general provisions because officials, teachers, students, merchants, travelers, or citizens of the United States. Inspection officers must enforce the laws and exclude every Chinaman not shown to be entitled to enter. If they should permit entry without demanding satisfactory proof of facts they would grossly violate their duty. An examination of the laws will make this manifest; and as to all Chinese except such as claim birth in the United States, I do not understand this theory of the law is denied.

In the *Sing Tuck* case this court declared the right and duty of inspection officers to pass upon claims of Chinese seeking admission on the border, and that such persons may be legally detained until before those offi-

cers they establish citizenship in some reasonable way. The applicant's *case* must be submitted to the officers.

The possible question, therefore, which can be presented to the court upon *habeas corpus* is whether citizenship has been established in some reasonable way, or an effort in good faith has been made so to do, before inspection officers in the necessary preliminary investigation. And unless it is alleged and shown that upon such investigation the officers should have admitted the applicant his exclusion and detention awaiting a return to the country from whence he came can not be said to be illegal.

It is the manifest duty of the officers to exclude and detain any Chinaman who fails to establish before *them* a right to enter, and detention in pursuance of such duty is lawful. If there was fraud or some illegal or unwarranted action in the course of the proceedings, the detention may be illegal; but if not, the imprisonment is proper.

Any proceedings before the court upon *habeas corpus* should be based on the case made before executive officers, and unless their judgment founded on that can be impeached in some proper way it should be treated as final. To allow an entirely new trial upon a wholly new record whenever citizenship is alleged would, in case of rejection, render the original investigation valueless—make it, indeed, an idle waste of time and energy. This would, moreover, nullify the requirement that the applicant must in some reasonable way demonstrate to the inspection officer right of entry and require that

officer in many, if not all, cases to act upon one state of facts—perhaps a mere perfunctory showing—and then leave the court to pass upon an entirely different one. The applicant must submit, or in good faith attempt to present, the facts upon which he claims the right to enter when he first seeks the privilege; otherwise his *case* can not in any proper sense be ruled on at all.

The officer in charge must either grant or reject an application upon the showing made to him when citizenship is set up and when not. If, as the law requires, he excludes the applicant and orders his return, the resulting confinement is clearly not unlawful—it is in exact harmony with the law. If to exclude one who claims citizenship is therefore illegal, it results that all who make such pretensions must be allowed to enter without question. This would destroy the power of the Government to protect itself.

Ex parte Watkins (3 Peters, 201).

The purpose of a writ of *habeas corpus* is to inquire into the *legality* of the confinement, and unless the court finds such confinement contrary to law the writ should be dismissed.

Nishimura Ekiu v. *United States* (142 U. S., 651, 662).

> A writ of *habeas corpus* is not like an action to recover damages for an unlawful arrest or commitment, but its object is to ascertain whether the prisoner can lawfully be detained in custody.

Ex parte Curtis, 106 U. S., 375.
Wales v. *Whitney*, 114 U. S., 571.
Carter v. *McClaughry*, 183 U. S., 381.

Unless the return to a writ of *habeas corpus* is in some way traversed the facts therein stated must be taken as true.

Crawley v. *Christensen*, 137 U. S., 94.

The writ of *habeas corpus* can not properly be used to perform the function of a writ of error or appeal.

Ex parte Watkins, 3 Peters, 201.
Wales v. *Whitney*, 114 U. S., 571.

IV.

The questions—their importance, their scope, and suggested answers thereto.

When the *Sing Tuck* case was before the court the Government pointed out the gravity of the issues involved, and undertook to show existing abuses and how the courts would probably be swamped with fraudulent litigation if the contention advanced in behalf of the Chinese should be sustained. Since the decision in that case the former practice has been modified by prosecuting formal appeals to the Secretary of Commerce and Labor, and when they have been dismissed writs of *habeas corpus* have been obtained in the same old way upon mere allegations of citizenship. The District Court at San Francisco has granted the writs as a matter of course. The result is that many proceedings of this character have been instituted in that jurisdiction and many more are in prospect.

The difficulties above narrated in reference to Chinese cases are likewise incident to the execution of the general immigration laws. The points upon which the Government now seeks an authoritative ruling are of great moment in view of the vast numbers seeking admission into the United States and the countless fraudulent claims to citizenship therein.

The first question:

In the opinion in the *Sing Tuck* case this question seems to have been fully answered in the negative. But the inferior court has either not so construed that opinion or has not felt bound to follow it. This question has been propounded in order that the practice may be settled.

The second question:

The Government submits this question should be answered by saying that the writ should be dismissed and no new or further hearing granted upon evidence to be presented. It appears unreasonable that hearing and judgment by immigration officers should be required and no effect whatsoever given to them by the courts.

The third question:

It is respectfully submitted this question should be answered by saying that under the conditions specified the court should treat the finding and action of the executive officers upon the question of citizenship and other questions of fact as having been made by a

tribunal authorized to decide the same and as final and conclusive, unless it should affirmatively appear that they are subject to impeachment for fraud or prejudicial error in the proceedings.

J. C. McREYNOLDS,

Assistant Attorney-General.

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